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EXAMINER

MATZEK, MATTHEW D

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DAVID P. PARADIS, and  
CHARLIE E. BOWERS

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Appeal 2009-0977  
Application 10/602,459  
Technology Center 1700

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Decided: <sup>1</sup> February 13, 2009

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Before BRADLEY R. GARRIS, ADRIENE LEPIANE HANLON, and  
KAREN M. HASTINGS, *Administrative Patent Judges*.

HASTINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's

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<sup>1</sup>The two-month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

final rejection of claims 1-26 and 57. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

### BACKGROUND

The invention relates to a blended fiber material, especially for use as carpet fiber (Spec. 1:10-15; Spec. 4:1-8).

Claim 1 is illustrative:

1. A fiber material, comprising:

a first base fiber component comprising a first denier and a first luster component;

a second base fiber component comprising a second denier and a second luster component, wherein the first denier and the second denier are different and wherein the first luster component and the second luster component are different; and

a plurality of binder fibers.

The Examiner relies upon the following prior art references in the rejection of the appealed claims:

Cobb	3,608,297	Sept. 28, 1971
Miller	US 2003/0165656 A1	Sept. 4, 2003

The Examiner has rejected claims 1-26 and 57 under 35 U.S.C. § 103(a) as being unpatentable over Cobb in view of Miller.

Appellants do not argue with any reasonable specificity any of the individual claims on appeal (Br. 5-8). Accordingly, we decide the present appeal on the basis of claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2007).

## ISSUE ON APPEAL

The issue on appeal arising from the contentions of Appellants and the Examiner is whether the Appellants have shown that the Examiner reversibly erred in rejecting the claims because there existed no motivation or suggestion to combine the teachings of Cobb and Miller. The issue turns on whether it would have been *prima facie* obvious to utilize the carpet binder fibers of Miller with the carpet fiber blend of Cobb.

## PRINCIPLES OF LAW

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007). The question to be asked is “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *KSR*, 127 S. Ct. at 1740.

The test for obviousness is what the *combined* teachings of the references would have suggested to those of ordinary skill in the art. *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

“Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.” *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

The Federal Circuit recently recognized that “[a]n obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been

obvious where others would not.” *Leapfrog Enter., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007).

#### FINDINGS OF FACT

1. Appellants do not dispute the Examiner’s findings that Cobb describes a carpet fiber material of a first base fiber of a first denier and a first luster component and a second base fiber of a second denier (different than the first denier) and a second luster component (different than the first luster component) as set out in claim 1 (Ans. 3; Cobb, e.g., col. 2, ll. 12-14; Table 5, carpet R; claim 8).

2. Cobb is silent as to the use of “a plurality of binder fibers” as required by claim 1 (Ans. 3; see generally Cobb).

3. It is also undisputed that Cobb describes use of nylon fibers for the blend of carpet fibers (Cobb, e.g., Table 1).

4. It is undisputed that Miller describes the use of a plurality of binder fibers for use with nylon carpet fibers for “improved tuft definition, improved worn appearance and wear resistance, reduced fuzzing and bearding” as well as other benefits (p. 2, ¶ [0014]; see also p. 3, ¶ [0026]).

5. Appellants’ Specification refers to the use of “*conventional binder fibers in conventional materials*” (Spec. 8:13-16; emphasis provided)

6. Appellants’ Examples of their invention are all directed to nylon fiber blends (Spec. 12-23, Examples 1-15)<sup>2</sup>.

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<sup>2</sup> Furthermore, Appellants’ Examples 1-5 use a “nylon-6 fiber product that comprises about 1 weight percent of binder fiber, such as T-417- which is manufactured by Honeywell International Inc. [i.e., the assignee of this case on appeal]” (e.g., Spec. 12:9-11). Thus, “T-417” appears to have been a commercially available product as of the filing date of this case.

## ANALYSIS

The sole issue on appeal is whether there is any motivation or suggestion to combine the teachings of Cobb and Miller (App. Br. 5-8).

We fully agree with the Examiner that it would have been *prima facie* obvious to modify the fiber blend of Cobb by providing a plurality of binder fibers for the known advantages of using binder fibers as described in Miller, and thus arrive at Appellants' claimed invention as set forth in claim 1 (Ans. 3-4).

The Supreme Court noted in *KSR* that although the teaching, suggestion, motivation test "captured a helpful insight," an obviousness analysis "need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR*, 127 S. Ct. at 1741.

The knowledge that binder fibers were a desirable component for use with carpet fibers having many known advantages would have been within the ordinary skill in the art, as evidenced by Miller. Indeed, Appellants refer to the use of "conventional binder fibers in conventional materials" (Spec. 8:13-16). *See In re Reuning*, 2008 WL 1836711 at 3 (Fed. Cir. 2008) (having acknowledged that a claimed element is taught by the prior art, an appellant cannot defeat an obviousness rejection by asserting that the cited references fail to teach or suggest this element).<sup>3</sup>

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<sup>3</sup>*See also Constant Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1570 (Fed. Cir. 1988) ("A statement in a patent that something is in the prior art is binding on the applicant and patentee for determinations of anticipation and obviousness.")

Therefore, it would have been *prima facie* obvious at the time the invention was made to have used “conventional binder fibers,” such as those described in Miller for nylon fibers, in the nylon carpet fiber blend of Cobb for the reasons disclosed in Miller. *KSR*, 127 S. Ct. at 1742 (one of ordinary skill in the art is “also a person of ordinary creativity, not an automaton”). The “improvement” herein appears to be no more than the predictable use of known binder fibers for their known purpose, for the predictable result of improved carpet properties. *See KSR*, 127 S. Ct. at 1739-40.

Appellants’ contention that no motivation exists to modify Cobb because Cobb “doesn’t state that there are additional needs that should be met by something like a binder fiber” is not well taken (Br. 7). The rejection before us is based on the combined teachings of Cobb and Miller. The Examiner has explained in detail the rationale for the obviousness rejection (Ans. 3-5). *See also, KSR*, 127 S. Ct. at 1742 (“[A]ny need or problem known in the field of endeavor at the time of invention and addressed by the patent [prior art] can provide a reason for combining the elements in the manner claimed.”). One of ordinary skill in the art would have appreciated that the carpet fibers of Cobb are subject to wear. One way to improve the worn appearance and other properties of the carpet fibers in Cobb would have been to use known prior art binder fibers as exemplified in Miller.

Furthermore, Appellants have presented no evidence that the inclusion of “conventional” binder fibers in the prior art carpet fiber blend of Cobb was “uniquely challenging or difficult for one of ordinary skill in the art” or “represented an unobvious step over the prior art.” *See, e.g., Leapfrog Enter., Inc.*, 485 F.3d at 1162.

We have considered Appellants' other arguments in the Appeal Brief and Reply Brief, but do not find any of them persuasive.

CONCLUSION

For the foregoing reasons and those expressed in the Answer, Appellants have not established that the Examiner reversibly erred in making out a prima facie case of obviousness.

Accordingly, we sustain the Examiner's § 103 rejection of claim 1, as well as not separately argued claims 2-26 and 57, based on Cobb and Miller.

ORDER

The Primary Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal maybe extended under 37 C.F.R. § 1.136(a).

AFFIRMED

tc

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